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THE TIMOR GAP TREATY: AN UPDATE

1. The signing of the Timor Gap Treaty by Australia and Indonesia on 11 December 1989 marked the end of the negotiation phase of the agreement and the beginning of the implementation phase which in turn will allow the operational phase to proceed, namely petroleum exploration and exploitation in the Zone of Cooperation.

2. The implementation phase involves, in the first place, bringing the Treaty into force through Parliamentary legislation. The Timor Task Force in the Department of Resources and Energy has confirmed this will be done when two pieces of legislation are put to the Parliament during the 2 to 3 week session commencing on May 8.

3. The legislation to go before Parliament is as follows:

    1. The Petroleum Zone of Cooperation Bill. This will give effect to the Treaty and will probably have the text of the Treaty annexed to it.

    2. The Petroleum Australia Indonesia Zone of Cooperation Consequential Amendments Bill.
    This will involve amendments, mostly minor, to the following acts:

    * Quarantine Act
    * Crimes at Sea Act
    * Occupational Health and Safety Act
    * Immigration Act
    * Customs Act
    * Industrial Relations Act
    * three Taxation Acts.

4. This legislation needs the support of both Houses of Parliament. The new Minister for Resources and Energy, Alan Griffiths, will have responsibility for the legislation in the House of Representatives while his predecessor in the portfolio, Senator Peter Cook, will steer it through the Senate (which will meet for one week longer than the Reps).
The Government is confident the legislation will be supported by the Opposition and will be passed by both Houses. It would appear in fact that the only opposition will come from the Democrats, and some Independents with possibly one or two Labor members of PET expressing concern. The Opposition Spokesperson on Foreign Affairs, Senator Robert Hill and another Coalition MP visited Indonesia before the recent elections to assure the Indonesian Government the Treaty had Opposition support and would be implemented should the Opposition win Government.

5. Other elements in this implementation phase involve the developing of rules and procedures for the joint Australia/Indonesia Ministerial Council, which will oversee the operation of the Treaty, and the Joint Authority which will be responsible for the management of petroleum operations in Area A (the area of joint development). It has already been agreed that the head office of the Joint Authority (covering financial, legal, and corporate services) will be located in Jakarta and the Technical Directorate of the Joint Authority, which will be responsible for the day to day administration of petroleum operations in Area A, will be located in Darwin.

6. Much of the early work of the Joint Authority will involve dividing Area A into contract areas with the aim of releasing exploration acreage in that area towards the end of 1990 at the earliest or more likely by April/May 1991. The awarding of contracts to successful

oil company bidders will take a further 2 to 3 months, hence it is not expected petroleum exploration activity will commence in Area A until late 1991.
Vacant exploration acreage in Area B of the Zone, the area under sole Australian jurisdiction, should become available in the first half of 1990.
Plans for Area C, Indonesia's area (the smallest of the three and possibly the least productive), are not known.

7. The legality of the Treaty is defended by Australia on the grounds that 'there is no binding legal obligation not to recognise the acquisition of territory acquired by force'.
This is disputed by international lawyers such as Roger Clark, Professor of Law at Rutgers University in the USA, who argues that 'Australia is under a legal obligation not to recognise Indonesia's acquisition of East Timor' and that its signing of the Treaty breaches that duty.

8. Whether the International Court of Justice will be asked to rule on the legality of the Treaty remains to be seen. Observers believe that Portugal, which has repeatedly condemned Australia over the Treaty and enjoys new status since joining the EEC, will ask the World Court to adjudicate.
Whatever the outcome of the ICJ's deliberations, such a move of itself would heighten the level of debate in Australia on the issue and severely interrupt the operational phase of the Treaty as, presumably, exploration and exploitation in the area could not proceed while the issue was sub iudice.

9. The Treaty contains some environmental protection provisions which, of itself, is an acknowledgement that drilling, extraction, transportation and other activities are potentially harmful to the environment. Environmentalists believe that oil drilling inevitably means oil spilling. One expert with experience of off shore drilling off the California coast in the US is adamant that oil drilling is environmentally hazardous, but that the extent of the threat is determined by factors such as the roughness of the seas, the remoteness of the area, the biological richness of the area (e.g. the Barrier Reef) and whether or not the oil is transported by pipeline or tanker, the latter being more hazardous as the Exxon Valdez spill vividly demonstrated. A significant spill could harm marine and other life forms, and pollute beaches and coastal areas. In this experts view oil drilling can also have negative socio-economic effects on communities in the area. Off-shore drilling in waters off Alaska led to the establishment of company town (and associated problems), the introduction of the dollar economy and the destruction of Eskimo culture.
It is not known how Indonesia intends to proceed in respect of Area C. Given this area's proximity to the south coast of East Timor, however, it is conceivable that a base or company town could be established there and that such a development would have a potentially destructive social and cultural impact on the local people.

10. An environmental campaign against offshore drilling along a section of the Californian coast resulted in the US Government imposing a a 10 year moratorium on oil exploitation in that area. The Sierra Club in California could advise further as could Dr Norm Sanders, who was involved in that campaign, and organisations such as Greenpeace.

Pat Walsh 20 April 1990

ACFOA Human Rights Office, 124 Napier St, Fitzroy 3065. Australia.